



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**  
[FRL-9646-7]  
**Proposed Consent Decree, Clean Air Act Citizen Suit**

**AGENCY:** Environmental Protection Agency (EPA)

**ACTION:** Notice of Proposed Consent Decree; Request for Public Comment

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Kentucky Environmental Foundation in the United States District Court for the District of Columbia: Kentucky Environmental Foundation v. Jackson, No. 11-1253 (D.D.C.). Plaintiff filed a complaint and a first amended complaint alleging that EPA failed to take timely action to approve, disapprove, or approve in part and disapprove in part the State of Kentucky's State Implementation Plan submittals or portions of submittals for: 1) the Kentucky portion of the Cincinnati-Hamilton area, submitted to EPA on or about December 3, 2008, with regard to the 1997 annual fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS); and 2) the Kentucky portion of the Louisville area, submitted to EPA on or about December 3, 2008, with regard to the 1997 annual PM<sub>2.5</sub> NAAQS. The proposed consent decree establishes a deadline of October 1, 2012, for EPA to take action on the Louisville submittal.

**DATES:** Written comments on the proposed consent decree must be received by [insert date 30 days after publication date in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2012-0190, online at [www.regulations.gov](http://www.regulations.gov) (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand

delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Stephanie L. Hogan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-3244; fax number (202) 564-5603; email address: Hogan.stephanie@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Additional information about the proposed consent decree.**

The proposed consent decree would resolve a lawsuit filed by Kentucky Environmental Foundation seeking to compel the Agency to take final action under sections 110(k)(2) and (3) of the CAA, 42 U.S.C. 7410(k)(2) and (3), on the State of Kentucky's State Implementation Plan (SIP) submittals dated December 3, 2008. Specifically, the lawsuit seeks to compel the Agency to take final action, pursuant to section 110(k) of the CAA, 42 U.S.C. 7410(k), on the 1997 PM<sub>2.5</sub> nonattainment area requirements, including the attainment demonstrations, contingency measures, emissions inventories, and reasonably available control measures/reasonably available control technology requirements in the Cincinnati-Hamilton SIP and the Louisville SIP.

On March 9, 2011, and September 29, 2011, respectively, EPA determined that the Cincinnati-Hamilton and the Louisville areas had attained the 1997 annual PM<sub>2.5</sub> NAAQS. See 76 Fed. Reg. 12,860; 76 Fed. Reg. 60,373. On September 30, 2011, the State of Kentucky withdrew its previously submitted attainment demonstrations, contingency measures, and

reasonably available control measures for the Cincinnati-Hamilton SIP and the Louisville SIP but did not withdraw any portions of its submittals for the Cincinnati-Hamilton SIP and the Louisville SIP that pertain to emissions inventories. On December 15, 2011, EPA approved the emissions inventory in the Cincinnati-Hamilton SIP. See 76 Fed. Reg. 77,903.

The proposed consent decree requires that, no later than October 1, 2012, the appropriate EPA official shall sign a notice of final rulemaking approving, disapproving, or approving in part and disapproving in part the emissions inventory in the Louisville SIP. In addition, the proposed consent decree requires that, following signature, EPA shall expeditiously deliver the notice to the Office of the Federal Register for publication in the Federal Register and shall thereafter provide a copy of the notice to Plaintiff within ten (10) days. After EPA fulfills its obligations under the proposed consent decree, the consent decree may be terminated.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the proposed consent decree will be affirmed.

## **II. Additional information about commenting on the proposed consent decree.**

### *A. How Can I Get A Copy Of the Consent Decree?*

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2012-0190) contains a copy of the proposed consent decree. The official public docket is

available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through [www.regulations.gov](http://www.regulations.gov). You may use [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at [www.regulations.gov](http://www.regulations.gov) without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

#### *B. How and To Whom Do I Submit Comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after

the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the [www.regulations.gov](http://www.regulations.gov) website to submit comments to EPA electronically is EPA’s preferred method for receiving comments. The electronic public docket system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA’s electronic public docket, EPA’s electronic mail (e-mail) system is not an “anonymous access” system. If you send an e-mail comment directly to the Docket without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket.

Dated: March 6, 2012

Patricia Embrey  
Acting Associate General Counsel

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